

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, et al.,

Defendants.

Civil Action No. 20-cv-11283-ADB

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF THE
PRESIDENTS' ALLIANCE ON HIGHER EDUCATION AND IMMIGRATION
REPRESENTING 180 HIGHER EDUCATION INSTITUTIONS IN SUPPORT OF
PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER**

The Presidents' Alliance on Higher Education and Immigration, on behalf of 180 of its member institutions, respectfully moves the Court for leave to file a memorandum of law as *amicus curiae* in support of Plaintiffs' motion for a temporary restraining order. Plaintiffs' motion seeks a temporary order enjoining Defendants from enforcing Immigration and Customs Enforcement's (ICE) July 6 directive and from promulgating the July 6 directive as a final rule.

Amicus Presidents' Alliance on Higher Education and Immigration represents the following 180 institutions of higher education:

- Adelphi University
- Adler University
- Agnes Scott College
- Arizona State University
- Augsburg University
- Augustana College
- Austin Community College District
- Bates College
- Beloit College
- Bennington College
- Bentley University
- Berkshire Community College
- Boston Architectural College
- Boston University

- Bowdoin College
- Bryn Mawr College
- Butler University
- Cal State Long Beach
- California Institute of Integral Studies
- California Institute of the Arts
- California Lutheran University
- California Polytechnic State University
- California State Polytechnic University Pomona
- California State University
- California State University Northridge
- California State University San Marcos
- California State University, Bakersfield
- California State University, Chico
- California State University, East Bay
- California State University, Fresno
- California State University, Fullerton
- California State University, Los Angeles
- California State University, Monterey Bay
- California State University, Sacramento
- California State University, San Bernardino
- California State University, Stanislaus
- Calvin University
- Carleton College
- Central Washington University
- Chapman University
- Charles R. Drew University of Medicine and Science
- Christian Brothers University
- Claremont Graduate University
- Claremont McKenna College
- Clark University
- Colby-Sawyer College
- College of the Holy Cross
- Colorado College
- Colorado State University System
- Community Colleges of Spokane
- Converse College
- Cornell College
- Davidson College
- Dickinson College
- Drexel University
- Eastern Michigan University
- Emerson College
- Foothill-De Anza Community College District
- Fordham University
- Franklin & Marshall College
- Gettysburg College
- Gonzaga University
- Goucher College
- Greenfield Community College
- Grinnell College
- Guilford College
- Hamilton College
- Harper College
- Hartwick College
- Haverford College
- Heidelberg University
- Howard Community College
- Illinois Institute of Technology
- Ithaca College
- Kenyon College
- Knox College
- La Sierra University
- Lafayette College
- Lake Forest College
- Lawrence University
- Lehigh University

- Lenoir-Rhyne University
- Lewis & Clark College
- Loma Linda University
- Loyola Marymount University
- Loyola University Chicago
- Macalester College
- Manhattan College
- Manhattanville College
- Maryland Institute College of Art
- Mercyhurst University
- Mills College
- Minnesota State University Moorhead
- Montgomery College
- Mount Holyoke College
- MSU Denver
- New Mexico Institute of Mining & Technology
- Northampton Community College
- Northern Essex Community College
- Northern Illinois University
- Northern Virginia Community College
- Oakland University
- Oberlin College
- Oregon State University
- Pace University
- Pacific Lutheran University
- Pacific Oaks College & Children's School
- Palo Alto University
- Pima Community College
- Pitzer College
- Pomona College
- Portland Community College
- Queens University of Charlotte
- Ramapo College of New Jersey
- Reed College
- Regis University
- Rhode Island School of Design
- Rhodes College
- Rochester Institute of Technology
- Roosevelt University
- Rose-Hulman Institute of Technology
- Rutgers University-Newark
- San Diego State University
- San Jose State University
- Santa Clara University
- Sarah Lawrence College
- Saybrook University
- School of Visual Arts
- Scripps College
- Seattle Pacific University
- Seattle University
- Seton Hall University
- Simmons University
- Sonoma State University
- Springfield College
- St. Catherine University
- St. Edward's University
- St. John's University NY
- St. Lawrence University
- State Center Community College District
- Stevens Institute of Technology
- TCS Education System
- The Chicago School of Professional Psychology
- The College of Wooster
- The New School
- The Ohio State University

- The University of Oklahoma
- Trinity University
- Trinity Washington University
- University of Dayton
- University of Denver
- University of La Verne
- University of Maryland Baltimore
- University of Miami
- University of Michigan - Dearborn
- University of Michigan-Flint
- University of Nevada, Las Vegas
- University of New Hampshire
- University of North Texas
- University of Oregon
- University of Puget Sound
- University of San Diego
- University of San Francisco
- University of the People
- University of the Sciences in Philadelphia
- University of the Southwest
- University of Utah
- Utah State University
- Vassar College
- Virginia Wesleyan University
- Wabash College
- Wake Forest University
- Warren Wilson College
- Washington and Lee University
- Wayne State University
- Weber State University
- Western Oregon University
- Western Washington University
- Wheaton College (Massachusetts)
- Whitman College

These 180 institutions of higher education, representing a diverse array of small and large, public and private institutions throughout the nation, are dedicated to bettering the lives of their students and communities, including during the current COVID-19 global pandemic. Though diverse in faith, academic mission, geography, and size, each institution is deeply concerned with and impacted by ICE's July 6 directive. For months, each school has been developing meticulous plans for the 2020 academic year that fulfill each school's academic mission while protecting the health of students, faculty, and staff during a global pandemic. In creating and announcing these plans, institutions relied on ICE's guidance that it would be flexible with in-person education requirements while the emergency was ongoing. But ICE's July 6 directive constitutes

an about-face that threatens to upend each institution's carefully crafted plans for the 2020 academic year.

The proposed *amicus* brief offers the perspective of these higher education institutions and their international students and highlights the substantial reliance interests that the July 6 directive upends with no regard. The brief strives to illustrate for the Court the far-ranging and varied considerations that went into higher education institutions' planning and judgment on how to proceed with the 2020 academic year. As *amicus* shows, the right response for the nation's largest public university system in California is different from the right response for a private liberal arts college in Pennsylvania or a downtown public university with commuter students. Yet each of these schools substantially relied on ICE's policy granting flexibility to employ online instruction. ICE's abrupt policy change, without considering these serious reliance interests or the comprehensive and complex planning processes each individual higher education institution employs, demonstrates the arbitrary and capricious nature of the July 6 directive.

A proposed brief for *amicus curiae* is attached hereto as Exhibit 1.

Dated: July 10, 2020

Respectfully submitted,

Paul W. Hughes (to file *pro hac vice*)
Sarah P. Hogarth (to file *pro hac vice*)
McDERMOTT WILL & EMERY LLP
500 North Capitol Street NW
Washington, DC 20001
Tel. (202) 756-8981
Fax (202) 756-8087
phughes@mwe.com
shogarth@mwe.com

/s/ Sarah E. Walters
Sarah E. Walters (BBO #638378)
McDERMOTT WILL & EMERY LLP
200 Clarendon Street, Floor 58
Boston, MA 02116-5021
Tel. (617) 535-4031
Fax (617) 535-3800
sewalters@mwe.com

Counsel for Amicus Curiae
Presidents' Alliance on Higher Education and Immigration

LOCAL RULE 7.1(b) CERTIFICATION

I hereby certify that counsel for *amicus curiae* has conferred with counsel for the parties in a good faith effort to narrow or resolve the issues in this motion. Plaintiffs consent to *amicus*'s request. The government takes no position on the motion for leave.

/s/ Sarah E. Walters

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2020, I caused the foregoing motion to be electronically filed with the Clerk of the Court using the CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Sarah E. Walters